

**STATE OF SOUTH DAKOTA  
DEPARTMENT OF SOCIAL SERVICES  
DIVISION OF MEDICAL SERVICES**

**Consultant Contract  
For Consultant Services  
Between**

State of South Dakota  
Department of Social Services  
DIVISION OF MEDICAL SERVICES  
700 Governors Drive  
Pierre, SD 57501-2291

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Referred to as Consultant

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Referred to as State

The State hereby enters into a contract for consultant services with the Consultant. While performing services hereunder, Consultant is an independent contractor and not an officer, agent, or employee of the State of South Dakota.

1. CONSULTANT'S South Dakota Vendor Number is \_\_\_\_\_.
2. PERIOD OF PERFORMANCE:  
This Agreement shall be effective as of March 1, 2013 and shall end on May 31, 2014, unless sooner terminated pursuant to the terms hereof. The terms of this Consultant contract shall be for a period of fourteen months, with the option to renew for two (2) additional years, in one (1) year increments at the discretion of the State.
3. WILL THE CONSULTANT USE STATE EQUIPMENT, SUPPLIES, OR FACILITIES?  
No.
4. PROVISIONS:
  - A. The Purpose of this Consultant contract:  
The contract is created to provide screening services to facilitate provider enrollment by DSS staff that will meet requirements of 42 CFR Parts 424 and 455.
  - B. The Consultant agrees to perform the following services (add an attachment if needed.):  
The Consultant will perform those services described in the Scope of Work, attached hereto as Section 3 of the RFP and by the reference incorporated herein.
  - C. The State agrees to:  
Provide the Consultant with an export of provider data to be used in meeting the contractual requirements. In addition the State will:
    1. Make payment for services upon satisfactory completion of services and receipt of bill. Payment will be in accordance with SDCL 5-26.
    2. Will the State pay Consultant expenses as a separate item?  
YES ( ) NO ( X )  
If YES, expenses submitted will be reimbursed as identified in this agreement.
    3. The **TOTAL CONTRACT AMOUNT** will not exceed \$ \_\_\_\_\_.

## 5. BILLING:

Consultant agrees to submit a bill for services within (30) days following the month in which services were provided. Consultant will prepare and submit a monthly bill for services. Consultant agrees to submit a final bill within 45 days of the contract end date to receive payment for completed services. If a final bill cannot be submitted in 45 days, then a written request for extension of time and explanation must be provided to the State.

## 6. TECHNICAL ASSISTANCE:

The State agrees to provide technical assistance regarding Department of Social Services rules, regulations and policies to the Consultant and to assist in the correction of problem areas identified by the State's monitoring activities

## 7. LICENSING AND STANDARD COMPLIANCE:

The Consultant agrees to comply in full with all licensing and other standards required by Federal, State, County, City or Tribal statute, regulation or ordinance in which the service and/or care is provided for the duration of this agreement. Liability resulting from noncompliance with licensing and other standards required by Federal, State, County, City or Tribal statute, regulation or ordinance or through the Consultant's failure to ensure the safety of all individuals served is assumed entirely by the Consultant.

## 8. ASSURANCE REQUIREMENTS:

The Consultant agrees to abide by all applicable provisions of the following assurances: Lobbying Activity, Debarment and Suspension, Drug-Free Workplace, Executive Order 11246 Equal Employment Opportunity, Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, Section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments of 1972, Drug Abuse Office and Treatment Act of 1972, Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, Age Discrimination Act of 1975, Americans with Disabilities Act of 1990, Pro-Children Act of 1994, Hatch Act, Health Insurance Portability and Accountability Act (HIPAA) of 1996, Charitable Choice Provisions and Regulations, and American Recovery and Reinvestment Act of 2009 as applicable.

## 9. RETENTION AND INSPECTION OF RECORDS:

The Consultant agrees to maintain or supervise the maintenance of records necessary for the proper and efficient operation of the program, including records and documents regarding applications, determination of eligibility (when applicable), the provision of services, administrative costs, statistical, fiscal, other records, and information necessary for reporting and accountability required by the State. The Consultant shall retain such records for six years following termination of this agreement. If such records are under pending audit, the Consultant agrees to hold such records for a longer period upon notification from the State. The State, through any authorized representative, will have access to and the right to examine and copy all records, books, papers or documents related to services rendered under this Agreement. State Proprietary Information retained in Consultant's secondary and backup systems will remain fully subject to the obligations of confidentiality stated herein until such information is erased or destroyed in accordance with Consultant's established record retention policies.

All payments to the Consultant by the State are subject to site review and audit as prescribed and carried out by the State. Any over payment of this contract shall be returned to the State within thirty days after written notification to the Consultant.

## 10. WORK PRODUCT:

Consultant hereby acknowledges and agrees that all reports, plans, specifications, technical data, drawings, software system programs and documentation, procedures, files, operating instructions and procedures, source code(s) and documentation, included those necessary to upgrade and maintain the software program, State Proprietary Information, State Data, End User Data, Personal Health Information, and all information contained therein provided to the State by the Consultant in connection with its performance of service under this Contract shall belong to and is the property of the State and will not be used in any way by the Consultant without the written consent of the State. Paper, reports, forms software programs, source code(s) and other materials which are a part of the work under this Contract will not be copyrighted without written approval of the State. Consultant agrees to return the primary work product and deliverables produced under this Contract and all

information received from the State to the State's custody, upon written request at the end of the term of this contract, unless otherwise agreed in a writing signed by both parties; provided, however, Consultant will not be obligated to return information contained in Consultant's secondary and backup systems.

**11. TERMINATION:**

This contract may be terminated by either party hereto upon thirty (30) days written notice, and may be terminated by the State for cause at any time, with or without notice. Upon termination of this agreement, all accounts and payments shall be processed according to financial arrangements set forth herein for services rendered to date of termination.

**12. FUNDING:**

This Contract depends upon the continued availability of appropriated funds and expenditure authority from the Legislature for this purpose. If for any reason the Legislature fails to appropriate funds or grant expenditure authority, or funds become unavailable by operation of the law or federal funds reduction, this Contract will be terminated by the State. Termination for any of these reasons is not a default by the State nor does it give rise to a claim against the State.

**13. AMENDMENTS:**

This Contract may not be assigned without the express prior written consent of the State. This Contract may not be amended except in writing, which writing shall be expressly identified as a part hereof, and be signed by an authorized representative of each of the parties hereto.

**14. CONTROLLING LAW:**

This Contract shall be governed by and construed in accordance with the laws of the State of South Dakota. Any lawsuit pertaining to or affecting this Agreement shall be venued in Circuit Court, Sixth Judicial Circuit, Hughes County, South Dakota.

**15. SUPERCESSION:**

All other prior discussions, communications and representations concerning the subject matter of this Contract are superseded by the terms of this Contract, and except as specifically provided herein, this Contract constitutes the entire agreement with respect to the subject matter hereof.

**16. SEVERABILITY:**

In the event that any provision of this Contract shall be held unenforceable or invalid by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

**17. NOTICE:**

Any notice or other communication required under this Contract shall be in writing and sent to the address set forth above. Notices shall be given by and to the Division being contracted with on behalf of the State, and by the Consultant, or such authorized designees as either party may from time to time designate in writing. Notices or communications to or between the parties shall be deemed to have been delivered when mailed by first class mail, provided that notice of default or termination shall be sent by registered or certified mail, or, if personally delivered, when received by such party.

**18. SUBCONTRACTORS:**

The Consultant may not use subcontractors to perform the services described herein without express prior written consent from the State. The Consultant will include provisions in its subcontracts requiring its subcontractors to comply with the applicable provisions of this Contract, to indemnify the State, and to provide insurance coverage for the benefit of the State in a manner consistent with this Contract. The Consultant will cause its subcontractors, agents, and employees to comply with applicable federal, state and local laws, regulations, ordinances, guidelines, permits and requirements and will adopt such review and inspection procedures as are necessary to assure such compliance.

## 19. HOLD HARMLESS:

The Consultant agrees to hold harmless and indemnify the State of South Dakota, its officers, agents and employees, from and against any and all actions, suits, damages, liability or other proceedings which may arise as the result of performing services hereunder. This section does not require the Consultant to be responsible for or defend against claims or damages arising solely from errors or omissions of the State, its officers, agents or employees.

## 20. INSURANCE:

Before beginning work under this Contract, Consultant shall furnish the State with properly executed Certificates of Insurance which shall clearly evidence all insurance required in this Contract. The Consultant, at all times during the term of this Contract, shall obtain and maintain in force insurance coverage of the types and with the limits listed below. In the event a substantial change in insurance, issuance of a new policy, cancellation or nonrenewal of the policy, the Consultant agrees to provide immediate notice to the State and provide a new certificate of insurance showing continuous coverage in the amounts required. Consultant shall furnish copies of insurance policies if requested by the State.

## A. Commercial General Liability Insurance:

Consultant shall maintain occurrence-based commercial general liability insurance or an equivalent form with a limit of not less than \$1,000,000 for each occurrence. If such insurance contains a general aggregate limit, it shall apply separately to this Contract or be no less than two times the occurrence limit.

## B. Business Automobile Liability Insurance:

Consultant shall maintain business automobile liability insurance or an equivalent form with a limit of not less than \$500,000 for each accident. Such insurance shall include coverage for owned, hired, and non-owned vehicles.

## C. Worker's Compensation Insurance:

Consultant shall procure and maintain Workers' Compensation and employers' liability insurance as required by South Dakota law.

## D. Professional Liability Insurance:

Consultant agrees to procure and maintain professional liability insurance with a limit not less than \$1,000,000.

(Medical Health Professional shall maintain current general professional liability insurance with a limit of not less than one million dollars for each occurrence and three million dollars in the aggregate. Such insurance shall include South Dakota state employees as additional insureds in the event a claim, lawsuit, or other proceeding is filed against a state employee as a result of the services provided pursuant to this Contract. If insurance provided by Medical Health Professional is provided on a claim made basis, then Medical Health Professional shall provide "tail" coverage for a period of five years after the termination of coverage.)

## 21. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY, AND VOLUNTARY EXCLUSION:

Consultant certifies, by signing this agreement, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by the federal government or any state or local government department or agency. Consultant further agrees that it will immediately notify the State if during the term of this Contract or its principals become subject to debarment, suspension of ineligibility from participating in transactions by the federal government, or by any state or local government department or agency.

## 22. CONFLICT OF INTEREST:

Consultant agrees to establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal organizational conflict of interest, or personal gain.

**23. REPORTING PROVISION:**

Consultant agrees to report to the State any event encountered in the course of performance of this Contract which results in injury to any person or property, or which may otherwise subject Consultant, or the State of South Dakota or its officers, agents or employees to liability. Consultant shall report any such event to the State immediately upon discovery.

Consultant's obligation under this section shall only be to report the occurrence of any event to the State and to make any other report provided for by their duties or applicable law. Consultant's obligation to report shall not require disclosure of any information subject to privilege or confidentiality under law (e.g., attorney-client communications). Reporting to the State under this section shall not excuse or satisfy any obligation of Consultant to report any event to law enforcement or other entities under the requirements of any applicable law.

**24. CONFIDENTIALITY OF INFORMATION:**

For the purpose of the sub-paragraph, "State Proprietary Information" shall include all information disclosed to the Consultant by the State. Consultant acknowledges that it shall have a duty to not disclose any State Proprietary Information to any third person for any reason without the express written permission of a State officer or employee with authority to authorize the disclosure. Consultant shall protect confidentiality of the State's information from the time of receipt to the time that such information is either returned to the State or destroyed to the extent that it cannot be recalled or reproduced. Consultant understands that this information is confidential and protected under applicable State law at SDCL 1-27-1.5, modified by SDCL 1-27-1.6, SDCL 28-1-29, SDCL 28-1-32, and SDCL 28-1-68. as applicable federal regulation and agrees to notify the State as soon as reasonably practical if unauthorized disclosure of the information occurs, either intentionally or inadvertently. The parties mutually agree that neither of them shall disclose the contents of the contract except as required by applicable law or as necessary to carry out the terms of the contract or to enforce that party's rights under this contract. Permission is hereby granted to Consultant to disclose State proprietary information, other than information about applicants, employers or clients, if reasonably necessary to carry out the purposes of this contract. Consultant acknowledges that the State and its agencies are public entities and thus are bound by South Dakota open meetings and open records laws. It is therefore not a breach of this contract for the State to take any action that the State reasonably believes is necessary to comply with the South Dakota open records or open meetings laws. If the State reasonably requires additional background checks of Consultant's personnel whose work assignments will be performed at the State's facilities or on the State's systems in the course of this contract, Consultant will assist the State in obtaining such personnel's consent to allow the State to perform such background checks.

## 25. AUTHORIZED SIGNATURES:

In witness hereto, the parties signify their agreement by affixing their signatures hereto.

_____ Consultant Signature	_____ Date
_____ State- DSS Division Director Kirby Stone	_____ Date
_____ State – DSS Chief Financial Officer Brenda Tidball-Zeltinger	_____ Date
_____	_____

## State Agency Coding:

CFDA #	_____	_____	_____	_____
Company	_____	_____	_____	_____
Account	_____	_____	_____	_____
Center Req	_____	_____	_____	_____
Center User	_____	_____	_____	_____
Dollar Total	_____	_____	_____	_____
	_____	_____	_____	_____

DSS Program Contact Person \_\_\_\_\_  
Phone \_\_\_\_\_

DSS Fiscal Contact Person Patty Hanson  
Phone 605 773-3586

Consultant Program Contact Person \_\_\_\_\_  
Phone \_\_\_\_\_

Consultant Fiscal Contact Person \_\_\_\_\_  
Phone \_\_\_\_\_

Consultant Email Address \_\_\_\_\_

SDCL 1-24A-1 states that a copy of all consulting contracts shall be filed by the State agency with the State Auditor within five days after such contract is entered into and finally approved by the contracting parties. For further information about consulting contracts, see the State Auditor's policy handbook.